

§ 2.1004

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(c) The participation of the host State in the pre-license application phase shall not affect the State's ability to exercise its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(d) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

[63 FR 71737, Dec. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 71737, Dec. 30, 1998, § 2.1003 was revised, effective Jan. 29, 1999.

§ 2.1004 Amendments and additions.

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental participant, or party responsible for the submission of the document within five days after it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding. The time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

[63 FR 71737, Dec. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 71737, Dec. 30, 1998, § 2.1004 was revised, effective Jan. 29, 1999.

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)—

- (a) Official notice materials;
- (b) Reference books and text books;
- (c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;
- (d) Press clippings and press releases;

(e) Junk mail;

(f) References cited in contractor reports that are readily available;

(g) Classified material subject to subpart I of this part;

(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

[63 FR 71738, Dec. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 71738, Dec. 30, 1998, § 2.1005 was revised, effective Jan. 29, 1999.

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(c), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 may be asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to—

- (1) The other participants; or
- (2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

[63 FR 71738, Dec. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 71738, Dec. 30, 1998, § 2.1006 was revised, effective Jan. 29, 1999.

§ 2.1007 Access.

(a)(1) A system to provide electronic access to the Licensing Support Network shall be provided at the headquarters of DOE, and at all DOE Local

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Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the Licensing Support Network shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices beginning in the pre-license application phase.

(3) The systems for electronic access specified in paragraphs (a)(1) and (a)(2) of this section shall include locations at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(b) Public availability of paper and electronic copies of the records of NRC and DOE, as well as duplication fees, and fee waiver for those records, is governed by the regulations of the respective agencies.

[63 FR 71738, Dec. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 71738, Dec. 30, 1998, § 2.1007 was revised, effective Jan. 29, 1999.

§ 2.1008 [Reserved]

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(d).

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer

that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. The responsible official shall update this certification at twelve month intervals. The responsible official for the DOE shall also update this certification at the time of submission of the license application.

[63 FR 71738, Dec. 30, 1998]

EFFECTIVE DATE NOTE: At 63 FR 71738, Dec. 30, 1998, § 2.1009 was revised, effective Jan. 29, 1999.

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter to serve as the Pre-License Application Presiding Officer to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(d).

(2) The Pre-License Application Presiding Officer shall be designated before the Licensing Support Network is scheduled to be available.

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

(3) Whether the material is privileged or otherwise excepted from disclosure under § 2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;